

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

American Mobile)
Telecommunications Association, Inc.'s)
Petition for Rulemaking)
to Expand Geographic Partitioning)
and Spectrum Disaggregation)
Provisions for 900 MHz SMR)

and)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

To: The Commission)

RM-8887

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PR Docket No. 93-144

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**REPLY COMMENTS OF
THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

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October 31, 1996

Pursuant to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on October 4, 1996 in the above-captioned proceeding,¹ and pursuant to Section 1.405 of the Commission's rules,² the American Mobile Telecommunications Association, Inc.'s ("AMTA" or "Association") hereby submits these reply comments in the above-captioned proceeding.

I. The Record Demonstrates Broad Support for AMTA's Proposal

1. AMTA's proposal to modify the 900 MHz rules to expand the geographic partitioning provisions to include all Metropolitan Trading Area ("MTA") licensees and to permit spectrum disaggregation received strong support from an array of commenters including 900 MHz Specialized Mobile Radio ("SMR") MTA licensees,³ incumbent 900 MHz Designated Filing Area ("DFA") licensees,⁴ and an industry trade association.⁵ These commenters agree that expanding 900 MHz licensees' partitioning and disaggregation rights will lower entry

¹ See, Public Comment Invited, American Mobile Telecommunications Association, Inc. Files Petition for Rulemaking to Expand Geographic Partitioning and Spectrum Disaggregation Provisions for 900 MHz SMR, Public Notice, DA 96-1654, 11 FCC Rcd ____ (rel. Oct. 4, 1996).

² 47 C.F.R. § 1.405(b).

³ See Comments of Geotek Communications, Inc. ("Geotek"), Comments of Industrial Communications & Electronics, Inc. ("IC&E"), Comments of Nextel Communications, Inc. ("Nextel") and Comments of Pittencrief Communications, Inc. ("PCI").

⁴ See Comments of CelSMer, Comments of Fisher Communications, Inc. ("Fisher") and Comments of IC&E.

⁵ See Comments of the Personal Communications Industry Association ("PCIA").

barriers for small businesses, facilitate the efficient use of the spectrum and provide consumers with more service options and innovative technology. As Fisher notes:

By expanding the partitioning and disaggregation rules, the Commission will provide 900 MHz licensees with greater flexibility to use their spectrum to develop niche markets and innovative wireless service offerings. If adopted, the proposed amendments to the Commission's rules will foster competition in the wireless marketplace by providing more licenses and licensees per service area, and will allow smaller entities who were foreclosed from the auction with another opportunity to obtain a 900 MHz license.⁶

Similarly, "allowing a licensee to define its own service area and spectrum needs will allow more experimentation and innovation in the CMRS services."⁷

2. In addition, commenters outlined specific instances in which not only incumbent 900 MHz DFA licensees could take advantage of the new rules: "upon adoption of such rules, the company [IC&E] anticipates the possible partitioning of the Los Angeles MTA, within which IC&E is an incumbent in San Diego, with both the auction winner and the co-channel incumbent in Los Angeles,"⁸ but also 900 MHz MTA auction winners: "[w]ith geographic partitioning, however, Geotek could enter into strategic relationships with third parties ("Partitioned Licensees") whereby the Partitioned Licensees would construct and implement the FHMA™ SMR network in areas where Geotek is not immediately scheduled to do so."⁹

3. In summary, the record establishes support for the expeditious adoption of modifications to the Commission's rules to expand the partitioning and disaggregation

⁶ Fisher Comments at ¶ 5.

⁷ PCI Comments at 3.

⁸ IC&E Comments at 5.

⁹ Geotek Comments at 2.

mechanisms at 900 MHz to include all eligibles. Such an approach recognizes that market-based solutions more effectively promote the public interest than the current restrictions.

II. The Commission Should Avoid Inadvertent Bias in Favor of Certain Technologies, By Allowing Licensees to Disaggregate Any Portion of Its Spectrum.

4. One commenter, CelSMeR, supports AMTA's proposals generally, but believes that 900 MHz MTA licensees should not be able to disaggregate less than one channel-pair.¹⁰ According to CelSMeR, disaggregating a mobile frequency from its paired base frequency could lead to improper use of that mobile frequency as a base or other fixed station at a higher than authorized Effective Radiated Power ("ERP"), causing harmful interference to other licensees.¹¹

5. AMTA submits that restricting the amount of spectrum to be disaggregated to one channel pair based on speculation that the use of an unpaired channel might cause increased interference is premature. The parties acquiring disaggregated spectrum would be subject to all of the Commission's general technical standards¹² as well as its operating requirements¹³ including the obligation to take reasonable precautions to avoid causing harmful interference.¹⁴ The public interest in allowing the marketplace to determine the amount of spectrum to be

¹⁰ CelSMeR Comments at 2.

¹¹ Id. at 3.

¹² See 47 C.F.R. §§ 90.201 - 90.217, Subpart I of Part 90.

¹³ See, 47 C.F.R. §§ 90.401-90.449 - Subpart N.

¹⁴ See, 47 C.F.R. § 90.403(e).

disaggregated outweighs restricting that flexibility in order to avoid potential interference. If the Commission discovers at a later date that CelSMer's fears were well-founded, it may always modify its rules to implement CelSMer's proposal.

III. The Commission Should Adopt Efficient Unjust Enrichment Rules Which Allow for the Expedited Assignment of Both Aggregated and Disaggregated Spectrum.

6. As explained in AMTA's Petition for Rulemaking, the Commission's unjust enrichment rules do not apply to post-auction transfers of spectrum, whether by transfer of contour, assignment, partitioning or disaggregation, if the spectrum is being acquired from entities that did not claim status as "small" or "very small" businesses.¹⁵ However, where the license involves installment financing or bidding credits, the Association recommended that the principles of the Commission's transfer restrictions and unjust enrichment rules should continue to apply.¹⁶

7. Accordingly, AMTA suggested that if a Partitionee/Disaggregatee that does not qualify as a small or very small business seeks to acquire spectrum from an entity that was granted small or very small business status, then the new licensee would be required to reimburse the US Treasury for its pro rata amount of the bidding credit extended to the MTA licensee plus interest.¹⁷ In the event a small or very small business-qualified MTA licensee seeks to partition or disaggregate some of its capacity to a similarly qualified entity, AMTA proposed that the FCC look to the Partitionee/Disaggregatee for payment of the pro rata portion

¹⁵ Petition for Rulemaking, American Mobile Telecommunications Association, Inc., ¶ 15 (Sept. 30, 1996)("Petition").

¹⁶ Id.

¹⁷ Id.

of any outstanding obligations to the Federal Treasury associated with the MTA license being partitioned or disaggregated.¹⁸ AMTA further proposed that the proportional value of the new license be determined by applying against the winning bid the percentage of the population in the geographic area partitioned or the percentage of the spectrum disaggregated.¹⁹

8. PCIA urges the Commission not to determine the proportional value of the license to be transferred.²⁰ According to PCIA, the possibility of Commission disagreement with the applicants would lead to uncertainty in structuring business deals. PCIA believes that the Commission should permit licensees to make the initial decision as to the proper proportional value of spectrum assigned and only intervene during the assignment process where "there is clearly an egregious mis-judgment of proportional value."²¹

9. AMTA takes this opportunity to clarify that its proposal was not meant to set the contract price of spectrum or geographic area. Its method of calculating the proportional value of a license was solely for purposes of repaying the US Treasury for the proportion of bidding credits or installment payments extended to the spectrum or geographic area. AMTA's proposal was meant to delineate an easily quantifiable amount to be reimbursed.

10. Both AMTA and PCIA have the same objective: to design a streamlined and efficient process of assignment and repayment. It is unclear why PCIA believes a purely ad hoc assessment by individual parties would be less susceptible to "specious Petitions to Deny" "filed

¹⁸ Id. at ¶ 16.

¹⁹ Id. at ¶ 18.

²⁰ PCIA Comments at 4.

²¹ Id.

by third parties which do not agree with the proportional value",²² than the approach recommended by AMTA.²³ Thus, absent evidence to support PCIA's proposed approach, AMTA recommends adoption of its original suggestion.

IV. The Commission Should Reject the Rural Telcos Request to Limit Competitive Opportunities.

11. As explained in AMTA's Petition for Rulemaking,²⁴ current rules permit 900 MHz MTA licensee to partition their spectrum, but only to rural telephone companies ("rural telcos"). AMTA has proposed to open eligibility for partitioning. As described infra, the majority of commenters support AMTA's recommendation; however, a coalition of small telephone companies oppose this proposal.²⁵

12. AMTA is pleased to see the rural telcos are now interested in providing SMR service. The Association was unaware that many, if any, wireline carriers, urban or rural, had taken advantage of the elimination of the prohibition against their ownership of SMR systems by acquiring SMR spectrum.²⁶ The Association takes this opportunity to welcome the rural telcos into the SMR industry to join with the local SMR operators who have been serving their

²² Id.

²³ As noted by PCIA: "The incentive to mis-proportion the value of the block being assigned is very real where the assignor is a small business but the assignee is not so qualified." PCIA Comments at 4, n. 4.

²⁴ Petition at ¶ 2.

²⁵ See, Comments of The Rural Telecommunications Group ("RTG"). AMTA notes that RTG's comments only address the Associations' partitioning scheme and says nothing about the disaggregation proposal.

²⁶ Report and Order, GN Docket No. 94-90, 77 RR2d 431 (1995).

communities for years. AMTA anticipates that its proposal will increase opportunities for all entities interested in providing this valuable service.

13. RTG contends that adoption of AMTA's proposal would "decrease rural telephone companies' presence in the SMR market and hinder the delivery of SMR services to rural America."²⁷ According to RTG:

[b]y proposing to eliminate this exclusive arrangement between rural telephone companies and SMR MTA licensees, AMTA is opening the door for less-qualified entities to undertake the responsibility of ensuring that the rural areas of the country receive quality, innovative SMR services in a timely manner.²⁸

14. This is inaccurate. By expanding the Commission's partitioning provision to include all eligible applicants, the FCC will open the door to numerous fully qualified wireless operators, including members of the incumbent SMR industry who have been providing SMR service to urban and rural communities for two decades. It appears RTG and its members must be unaware of the long-standing, exemplary record of this industry in serving rural wireless needs, perhaps because their focus and expertise have been concentrated on wireline matters. AMTA submits that there is no basis in fact for RTG's assertion that rural wireline operators, with little or no experience in the wireless arena, are more qualified or more inclined to provide high quality SMR service to subscribers than are the entities that have served that community well for decades.

15. AMTA urges the Commission to reject the request by rural telephone companies to abandon the pro-competitive proposals set forth in the Association's Petition. Their claims

²⁷ Id. at 2.

²⁸ RTG Comments at 3.

that rural carriers and their customers will be harmed if parties other than rural telcos are permitted to purchase partitioned licenses are unsupported and unsupportable.

V. Conclusion

16. For the reasons stated herein and the reasons stated in its Petition, the Association urges the Commission to adopt AMTA's proposal to expand the Commission's partitioning and disaggregation rules to include all 900 MHz MTA licensees.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 31st day of October, 1996, mailed a copy of the foregoing Reply Comments to the following:

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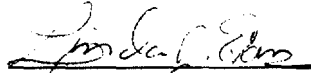
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